



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,688	03/11/2004	James M. Alkove	MS1-2008US	6286
22801	7590	11/25/2008		
LEE & HAYES PLLC 601 W Riverside Avenue Suite 1400 SPOKANE, WA 99201			EXAMINER GELAGAY, SHEWAYE	
			ART UNIT 2437	PAPER NUMBER
			MAIL DATE 11/25/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/798,688	Applicant(s) ALKOVE ET AL.	
	Examiner SHEWAYE GELAGAY	Art Unit 2437	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 43-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 43-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to Applicant's amendment filed on September 15, 2008. Claims 1, 8 and 43 have been amended. Claim 9 is cancelled. New claim 47 has been added. Claims 1-8 and 43-47 are pending.

Response to Arguments

2. Applicant's arguments filed 9/15/08 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 8 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 8 recites "computer-readable instructions" which is consistent with a language that is implemented with only software. A computer instruction is a functional descriptive material which is non-statutory. The computer instructions are not tangibly embodied in a physical medium.

3. Claims 3 and 44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 3 and 44 recite "down stream component comprises a software component" however, the specification discloses on paragraph 20 "a downstream component" as "a driver software (or the software

Art Unit: 2437

representation associated with hardware interface) that is utilized to interface with hardware.” Since the “downstream component” could be a software representation, the whole claim is consistent with a language that is implemented with only software. Therefore, the claims do not fall within one of the four category classes set forth in 35 U.S.C. 101. Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claims as a whole are non-statutory.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Hardware Platform for Next-Generation Secure Computing Base” December 2001 (hereinafter NGSCB) in view of in view of Risan et al. (hereinafter Risan) US 2005/0060542.

6. As per claims 1, 8 and 43:

NGSCB teaches a method comprising: establishing a secure communication channel between an application and a component downstream from the application; (pages 6-7, Security Support Component; pages 8-9, Secure Video Hardware; encrypted path must be established to prevent other devices from snooping

Art Unit: 2437

secrets...encrypts the video data before sending it to the graphics adaptor, which can then decrypt the video data before displaying it in a secure window) and

using the secure communication channel to at least enable the application to instruct the downstream component to enable to protect content that is provided over a physically connector to an output device. (pages 6-7, Security Support Component; pages 8-9, Secure Video Hardware; the graphics adaptor decrypt the video data before displaying it in a secure window)

NGSCB does not explicitly disclose a media playback application and instructing the downstream component to enable one or more of a number of different types of content protection technologies to protect media content. Risan in analogous art, however, discloses that a media playback application and instructing the downstream component to enable one or more of a number of different types of content protection technologies to protect media content. (page 7, pp.72, page 8, pp.77, 80-81, page 9, pp.84-85) Therefore it would have been obvious to one ordinary skill in the art at the time the invention was made to modify the system disclosed by NGSCB with Risan in order to prevent recording applications that are adapted to establish a connection with a kernel level driver operable within an operating system to capture and redirect a media file to create an unauthorized reproduction of the media file. (page 1, pp. 10; Risan)

As per claims 2 and 45-46:

The combination of NGSCB and Risan teaches all the subject matter as discussed above. In addition, Risan further teaches using the secure communication channel to enable the media playback application to instruct the downstream

Art Unit: 2437

component as to how to apply one or more of the different types of content protection technologies. (page 7, pp.72, page 8, pp.77, 80-81, page 9, pp.84-85)

As per claims 3 and 44:

The combination of NGSCB and Risan teaches all the subject matter as discussed above. In addition, NGSCB further teaches wherein the downstream component comprises a software component. (page 6, Security Support Component; pages 8-9, Secure Video Hardware)

As per claim 4:

The combination of NGSCB and Risan teaches all the subject matter as discussed above. In addition, NGSCB further teaches using the secure communication channel to enable the media playback application to request status information from the downstream component. (pages 8-9, Secure Video Hardware)

As per claims 5 and 7:

The combination of NGSCB and Risan teaches all the subject matter as discussed above. In addition, NGSCB further teaches using the secure communication channel to enable the media playback application to request status information from the downstream component; (pages 8-9, Secure Video Hardware) and using the secure communication channel to receive status information from the downstream component. (pages 8-9, Secure Video Hardware)

As per claim 6:

The combination of NGSCB and Risan teaches all the subject matter as discussed above. In addition, NGSCB further teaches using the secure communication

Art Unit: 2437

channel to enable the media playback application to request status information from the downstream component; and using the secure communication channel to receive status information from the downstream component, wherein the status information sent by the media playback application. (pages 8-9, Secure Video Hardware) Risan teaches the status information pertains to instructions that were previously sent by the media playback application. (page 9, pp.84-85; page 24, pp. 211)

As per claim 47:

The combination of NGSCB and Risan teaches all the subject matter as discussed above. In addition, NGSCB further wherein the output device is either a video display or audio speakers. (pages 8-9, Secure Video Hardware)

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 2437

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEWAYE GELAGAY whose telephone number is (571)272-4219. The examiner can normally be reached on 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on 571-272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. G./
Examiner, Art Unit 2437

/Emmanuel L. Moise/
Supervisory Patent Examiner, Art Unit 2437